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California Regional Water Quality Control Board San Francisco Bay Region

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Arnold Schwarzenegger
Governor

August 27, 2008

By Certified Mail, Return Receipt Requested

U.S. Department of Transportation
Honorable Mary E. Peters
Secretary of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Maritime Administration
Honorable Sean T. Connaughton
Maritime Administrator
West Building
Southeast Federal Center
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: **60-Day Notice of Intent to Sue Under the Clean Water Act for Unlawful Discharge of Pollutants by Non-Retention Vessels Comprising the National Defense Reserve Fleet at Suisun Bay, Solano County, California**

Dear Secretary Peters and Administrator Connaughton:

The California Regional Water Quality Control Board, San Francisco Bay Region (hereafter "Water Board"), hereby provides notice of its intent to sue the U.S. Department of Transportation; the Honorable Mary E. Peters, in her official capacity as Secretary of Transportation; the United States Maritime Administration ("MARAD"); and the Honorable Sean T. Connaughton, in his official capacity as Maritime Administrator. These persons and entities are hereafter collectively referred to as the "Federal Violators." The Water Board provides this notice pursuant to sections 505(a)(1) and 505(b)(1) of the Federal Water Pollution Control Act (hereafter referred to as the "Clean Water Act" or "CWA"), 33 U.S.C. § 1365(a)(1) and (b)(1) and its implementing regulations, 40 C.F.R. Part 135, Subpart A.

The Water Board is an agency of the State of California, and is one of nine such regional water quality control boards which have been delegated the authority to administer and implement the Clean Water Act in California, including the authority to issue National Point Source Discharge Elimination System ("NPDES") permits and to enforce the Clean Water Act through the California Porter-Cologne Water Quality Control Act (hereafter "Porter-Cologne Act," Cal. Water Code § 13000 et seq.). (Cal. Water Code §§ 13200 et seq., 13370, 13372, 13376, 13377, 13385.) The Water Board is a "citizen" within the meaning of 33 U.S.C. § 1365(g) because its interests in ensuring compliance with the Clean Water Act and Porter Cologne Act, preventing pollution and contamination of waters of the state and of the United States, and protecting the

California Environmental Protection Agency

designated beneficial uses of waters of the state and of the United States have been adversely affected by the Federal Violators' discharges of pollutants in violation of the Clean Water Act, as described in this notice letter.

Introduction and Background

According to MARAD's draft *Programmatic Environmental Assessment for Removal of Non-Retention Vessels from National Defense Reserve Fleet Sites for Disposal*, dated June 2008 (hereafter "Draft EA"), MARAD currently maintains 57 non-retention vessels at the National Defense Reserve Fleet ("NRDF") at Suisun Bay (hereafter the "Suisun Bay Reserve Fleet" or "SBRF"). (Draft EA at p. 1-4.) "Non-retention vessels" are "NRDF vessels that have been determined by [MARAD] to be of insufficient value for commercial or military operation to warrant further preservation. The term is used synonymously with 'obsolete vessels'." (*Id.* at p. 5-5.) These vessels are stored in Suisun Bay, which constitutes waters of the state and of the United States, and is located northeast of the City of Benicia in Solano County, California. Pursuant to section 303(d) of the Clean Water Act (33 U.S.C. § 1313(d)), Suisun Bay is listed by the Water Board as "impaired," due to both point and non-point sources, by the following pollutants (among others): mercury, nickel, polychlorinated biphenyls (PCBs), dioxin and selenium. (See State Water Resources Control Board, *2006 CWA Section 303(d) List of Water Quality Limited Segments*, excerpts of which are attached hereto as "Exhibit A," see also Draft EA at pp. 3-3, 3-5.)

Since 1994, Congress repeatedly has mandated that MARAD remove and dispose of the obsolete NRDF vessels by specified dates. (See National Maritime Heritage Act of 1994, Pub. L. No. 103-451, § 6, 108 Stat. 4769, 4777 (1994); National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105-85, § 1026, 111 Stat. 1629, 1878 (1997); National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, § 3502, 114 Stat. 1654, 1654A-490-492 (2000).) However, the Federal Violators have failed to meet each of these statutory deadlines, and the SBRF vessels consequently remain in Suisun Bay. Moreover, the vessels are likely to remain in Suisun Bay for the foreseeable future; the Water Board is unaware of any specific time frame for removal of these ships.

The obsolete vessels in the SBRF are poorly maintained and are in a highly deteriorated condition. (Draft EA at p. 4-7.) These vessels contain many liquid and solid wastes, materials and other pollutants as defined in section 502(6) of the Clean Water Act. (33 U.S.C. § 1362(6).) A draft "Vessel Environmental Review" of the SBRF prepared in 2007 by R&M Environmental and Infrastructure Engineering, Inc. analyzed the hulls of forty of the SBRF vessels and found that they contained elevated concentrations of zinc, copper, mercury, lead, hexavalent chromium, tributyltin and other heavy metals and other pollutants. (R&M Env'tl & Infrastructure Eng., Inc., *National Defense Reserve Fleet (NRDF), Suisun Bay, CA Vessel Environmental Review*, Feb. 15, 2007, hereafter "R&M Report," at pp. 27-34, excerpts attached hereto as "Exhibit B;" see also Draft EA at pp. 3-6 – 3-8.)

The Draft EA likewise indicates that "[n]on-retention ships contain a variety of hazardous and toxic materials within their structural components." (Draft EA at p. 3-6.) For example, the EA

states, lead-based paint "is found extensively in older ships," as is paint and protective hull coatings containing chromium, cadmium, nickel, zinc, copper and manganese, and tributyltin, organotin and other toxic anti-fouling agents. (*Id.* at pp. 3-7, 3-8, 4-9.) In fact, "[h]eavy metals including mercury, lead, chromium, cadmium, zinc, copper, nickel and manganese are found *throughout* older ships." (*Id.* at p. 3-7, emphasis added.) Moreover, "[m]any of the ships currently moored at the fleet have degraded coatings." (*Ibid.*) In addition, "PCBs are likely to be found in regulated concentrations" on ship equipment and materials and "many areas on a ship." (*Ibid.*) "Asbestos [also] is found on ships in many types of materials." (*Id.* at p. 3-6.) Finally, non-retention ships commonly contain used oil such as "spent lubricating fluids . . . ; industrial oils . . . ; metal-working oil; and refrigeration oil." (*Id.* at p. 3-8.) "Diesel fuel and fuel oil may be contained in various tanks throughout a ship," and "[l]ubricating oil can be found in engine sumps and drums . . . and oil sludge can be found in fuel and cargo tanks, machinery and piping systems." (*Ibid.*)

The R&M Report found that the forty sampled vessel hulls exceeded toxicity criteria for hazardous waste with respect to zinc, lead, copper, hexavalent chromium, mercury, cadmium and barium. (Ex. B, R&M Report at pp. ES-1, ES-2, 28-30; see also Draft EA at p. 4-14.) The R&M Report also found that paint and other materials containing heavy metals and other pollutants have fallen and are continuing to fall off the ships' corroded hulls into the surrounding waters of Suisun Bay. Specifically, the forty ships evaluated have lost 18,271 kg (over 20 tons) of hexavalent chromium, copper, lead, zinc and other heavy metals from their hulls, and an estimated 57,179 kg of metals remain on the exterior surfaces of these ships.¹ (Ex. B, R&M Report at pp. ES-2, ES-3, 3, 4, 32-34.) These metals and other materials will continue to exfoliate from the ships due to age and weathering, and continue to be released into the surrounding environment of Suisun Bay. (See *id.* at p. 33.) The discharge of paint and other materials from the SBRF ships to Suisun Bay also has been documented by the National Oceanic and Atmospheric Administration (NOAA) in its recent studies of the site. (See NOAA DARRP Program, Suisun Bay Nat'l Reserve Fleet Assessment Project, Field Sampling Highlights, attached hereto as "Exhibit C.")

The Draft EA confirms that the SBRF vessels are "highly deteriorated," and that two of the SBRF vessels have known holes in their hulls "which can be a possible pathway for potentially hazardous materials to leach into the environment." (Draft EA at pp. 3-9, 4-7.) According to the EA, many of the other vessels' hulls are in "poor" or "fair" condition, and have some "potential" for holes. (*Id.* at pp. 3-9, 4-8.) A December 2006 test of the hulls of two MARAD vessels, the *Jason* and *Queens Victory*, conducted by the California Department of Toxic Substances

¹ Because the R&M Report only evaluated forty of the 57 non-retention ships, it is highly likely that the actual amount of pollutants that already have been discharged and will continue to be discharged into Suisun Bay are higher than the amounts stated in the report. In addition, the R&M Report "only concerned itself with the paints and coating issues," and did not examine the forty ships for the potential presence of asbestos, PCBs, fuels, oils and other substances. (Ex. B, R&M Report at p. 1.) Nor did the R&M Report examine paint exfoliation below the waterline. (*Id.* at p. 5.)

Control, found "elevated levels of copper, chromium, and zinc" on the hull of one of the vessels in "concentrations high enough to be considered hazardous waste" under the California Code of Regulations. (*Id.* at p. 4-9.)

Furthermore, the Federal Violators have signaled their intention to clean the hulls and topsides of these deteriorated vessels (both above and below the waterline) in waters of San Francisco Bay prior to their eventual removal and disposal. (See Draft EA at pp. 2-4, 2-5, 2-6, 2-12, 4-9.) If not conducted in compliance with the Clean Water Act and Porter-Cologne Act, these activities will result in further discharge of paints containing heavy metals, rust, corroded pieces of metal, asbestos, PCBs, contaminated hull biofouling organisms, other organic and inorganic materials and other pollutants into the waters of the state and of the United States. (*Id.* at pp. 2-4, 2-6, 4-9 – 4-11, 4-14, 4-19.) A test of the Federal Violators' proposed method of in-water hull cleaning (scamping) in James River, Virginia demonstrated a lack of complete containment of material removed from the vessel hull. (*Id.* at pp. 2-12, 4-9, 4-14, 4-15, 4-19; see also MARAD, Supplemental Information: Sampling and Analysis – James River Pilot Project, June 2007, attached hereto as "Exhibit D.")

The Water Board previously informed MARAD that "[t]he discharge associated with the scamping process, which is currently completed in-[San Francisco] Bay, threatens to cause or contribute to exceedances of water quality standards of the Bay." (Letter from Bruce Wolfe, Executive Officer of the Water Board, to Michael Carter, Office of Environmental Activities, MARAD, re Proposed In-Bay Cleaning of Jason and Queens Victory, dated Dec. 22, 2006, at p. 1, attached hereto as "Exhibit E".) Moreover, in its comments on the James River Scamping Test Report, the Water Board stated that the sample results from the James River scamping test "indicated that dissolved copper and zinc concentrations in the vicinity of the active scamping device were significantly above background concentrations and exceeded California Toxics Rule Water Quality Criteria, which are federal standards." (Letter from Bruce Wolfe, Executive Officer of the Water Board, to Shannon Russell, MARAD, re Comments on James River Scamping Test Report and Water Code Section 13267 Technical Report Requirement – Maritime Administration – National Defense Suisun Bay Reserve Fleet, dated Sept. 14, 2007, at p. 2, attached hereto as "Exhibit F.")

The National Marine Fisheries Service likewise has indicated that, based on its analysis of the results of the R&M Report, MARAD's proposal for cleaning and removal of the SBRF vessels in San Francisco Bay "has the potential to result in adverse effects to water quality" which could result in impacts to several fish species, including species listed under the federal Endangered Species Act.² (Letter from Dick Butler, NMFS, to Michael Carter, MARAD, dated Aug. 27, 2007, at p. 1, attached hereto as "Exhibit G.") The San Francisco Bay Basin Plan requires these fisheries to be protected as designated beneficial uses in Suisun Bay. (See San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan), Table 2-1, Suisun Basin, excerpts of

² The potentially affected species are: Sacramento River winter-run Chinook salmon, Central Valley spring-run salmon, Central Valley steelhead, Central California Coast steelhead, and North American southern Green Sturgeon. (*Ibid.*)

which are attached hereto as "Exhibit H.") Furthermore, NMFS stated, "movement of these vessels without proper preparatory cleaning . . . could result in the discharge of significant numbers of paint chips from the vessels," which the R&M Report documented to contain "elevated levels" of copper, lead, zinc, tributyltin and other heavy metals, and which also are likely to contain PCBs. (Ex. G, NMFS Letter at p. 2.)

Federal Violators' Violations of the Clean Water Act

The ongoing discharge of pollutants from the SBRF vessels into Suisun Bay as described above, including paint, hull fragments, rust, organic and inorganic matter containing heavy metals, PCBs, fuels, used oil, asbestos and other pollutants, as well as the threatened discharge of pollutants from any in-water cleaning of the vessels (both above and below the waterline) in San Francisco Bay, constitutes a prohibited discharge of pollutants, as defined in sections 502(6), (12) and (13) of the Clean Water Act, and is a violation of section 301(a) of the CWA. (33 U.S.C. §§ 1311(a), 1362(6), (12), (13).) Each of the 57 non-retention vessels currently in the SBRF, as well as any such vessels that MARAD had added to the SBRF prior to the date of this notice and will add to the SBRF in the future, constitutes a point source or sources within the meaning of section 502(14) of the CWA. (33 U.S.C. § 1362(14).) Suisun Bay and the greater San Francisco Bay are navigable waters (e.g. waters of the United States) within the meaning of section 502(7) of the CWA. (33 U.S.C. § 1362(7).) Because the Federal Violators do not have an NPDES permit for discharge of these pollutants, these discharges also are in violation of section 402(a) of the Clean Water Act. (33 U.S.C. § 1342(a).)

These unlawful and unpermitted discharges have caused or contributed to, and if not abated will continue or threaten to cause or contribute to, the impairment of Suisun Bay and other waters of the San Francisco Bay, in part by discharging pollutants, such as mercury, nickel and PCBs, for which Suisun Bay and other water bodies in the San Francisco Bay region are listed as water quality limited segments (water bodies) pursuant to section 303(d) of the CWA.

Furthermore, these unlawful and unpermitted discharges have caused or contributed to, and if not abated will continue or threaten to cause or contribute to, exceedances of water quality objectives (criteria to protect designated beneficial uses) for San Francisco Bay in general and Suisun Bay in particular, as specified in the San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan). Applicable water quality objectives that have been and are continuing to be violated, or that are threatened to be violated, include, but are not limited to: bioaccumulation; floating material; oil and grease; population and community ecology; settleable material; suspended material; toxicity; turbidity; and objectives for the specific chemical constituents of cadmium, chromium, copper, lead, mercury, nickel, tributyltin, and zinc. (See Ex. H, Basin Plan at Chap. 3 and Tables 3-3, 3-4.)

The unlawful and unpermitted discharges also have violated and are continuing to violate or threaten to violate the Basin Plan's prohibition against discharging toxic and deleterious substances, rubbish, refuse, other solid waste, and floating oil and other floating materials to San Francisco Bay. These discharges also have harmed, and will continue to harm or threaten to harm, various designated beneficial uses of Suisun Bay and San Francisco Bay, including,

but not limited to, the following: ocean, commercial and sport fishing; estuarine habitat; fish migration; preservation of rare and endangered species; water contact recreation; non-contact water recreation; fish spawning; and wildlife habitat. (Ex. H, Basin Plan at Ch. 2 and Table 2-1, Suisun Basin.) The unlawful and unpermitted discharges have lowered and will continue to lower or threaten to lower water quality of Suisun Bay, thereby violating state and federal antidegradation requirements. Finally, the discharges have caused or contributed to and will continue or threaten to cause or contribute to conditions of contamination, pollution and nuisance in Suisun Bay and San Francisco Bay.

In addition to violating the Clean Water Act, the unlawful and unpermitted discharges also constitute violations of the state Porter-Cologne Act, because the Federal Violators are discharging and proposing to discharge pollutants into the navigable waters of the United States within the jurisdiction of the State of California without authorization, in violation of California Water Code section 13376. Pursuant to section 13385(b) of the California Water Code, these violations of section 13376 subject the Federal Violators to civil penalties of up to \$25,000 for each day in which the violations have occurred or continue to occur, with an additional penalty of up to \$25 times the number of gallons discharged in excess of 1,000 gallons that the Federal Violators have failed to clean up. (Cal. Water Code §§ 13385(a)(1) and (b).)

The above-referenced violations of sections 301(a) and 402(a) of the Clean Water Act and section 13376 of the Porter Cologne Act have occurred for each non-retention vessel in the SBRF on each day since August 27, 2002, and will continue to occur for each non-retention vessel in the SBRF until the violations are abated by the Federal Violators. The violations may be abated by: ceasing any and all discharges from each non-retention vessel; obtaining and complying with a valid NPDES permit for discharges from each non-retention vessel; and/or removing each non-retention vessel from waters of the United States within the jurisdiction of the State of California, in full compliance with the CWA and Porter-Cologne Act and all other applicable federal and state laws.

Notwithstanding the Water Board's previous warnings and notices (as described below), the ongoing, continuing and threatened violations of the Clean Water Act and Porter-Cologne Act continue. Therefore, upon expiration of sixty days from the date of this notice letter, unless abated prior to this date, the Water Board intends to sue the Federal Violators for these ongoing, continuing and threatened discharges of pollutants in violation of sections 301(a) and 402(a) of the Clean Water Act and section 13376 of the Porter-Cologne Act.

Violations of the Water Board's Technical Report Requirements for the SBRF

Over one year ago (on July 6, 2007), the Water Board informed MARAD that the discharges documented by the R&M Report constitute violations of the Clean Water Act which pose a significant risk to San Francisco Bay that "must be abated." (Letter from Bruce Wolfe, Executive Officer of the Water Board, to Shannon Russell, MARAD, re: Water Code Section 13267 Technical Report Requirement – National Defense Suisun Bay Reserve Fleet – Illicit Hazardous Waste Discharge, Suisun Bay, Solano County, dated July 6, 2007, at p. 2, attached

hereto as "Exhibit I.") Specifically, the R&M Report documented the following discharges: 1) discharges of heavy metals in concentrations which exceed hazardous waste thresholds; and 2) discharges of significant quantities of peeling paint into Suisun Bay. (*Ibid.*) Furthermore, the R&M Report indicated that "significant quantities of peeling paint remain on the ships and these paints are likely to discharge to Suisun Bay over time." (*Ibid.*)

In its July 6, 2007 letter, the Water Board ordered that, pursuant to California Water Code section 13267(b), MARAD submit a "Hazardous Waste Mitigation Workplan" by August 6, 2007, describing the methods and schedules that MARAD would employ to remove the peeling paint from the SBRF vessels "to ensure that no peeling paint is discharged to San Francisco Bay." (*Ibid.*) Although MARAD submitted a non-substantive one-page letter in response, it did not submit the required workplan. Consequently, the Water Board subsequently issued a Notice of Violation to MARAD. (Letter from Bruce Wolfe, Executive Officer of Water Board to Shannon Russell, MARAD, re Notice of Violation – Inadequate Report – National Defense Suisun Bay Reserve Fleet – Illicit Hazardous Waste Discharge – Suisun Bay, Solano County, dated Oct. 1, 2007, attached hereto as "Exhibit J.")

In addition, over one and a half years ago (on December 22, 2006), the Water Board informed MARAD that in-water hull cleaning of MARAD ships:

threatens to violate the Clean Water Act by discharging material high in metals including copper, lead and zinc, such as hull coatings (paints) and potentially, corroded parts of existing hulls as debris and/or large particulates directly to San Francisco Bay. The cleaning also threatens to discharge to the Bay organic materials and organisms currently attached to the ships; those materials and organisms may have incorporated metals from the hull coating to which they attach and could constitute the discharge of pollutants.

(Ex. E at p. 1.) Furthermore, the Water Board informed MARAD that any in-water hull cleaning requires an NPDES permit pursuant to section 402 of the Clean Water Act if any discharge of pollutants may occur. (*Id.* at p. 2.)

Then, on September 14, 2007, the Water Board indicated to MARAD that, based on the results of the James River pilot test of MARAD's proposed in-water hull cleaning method, "the soluble zinc and copper concentrations detected in the vicinity of the scamping device are elevated and may preclude use of this device in California State Waters without the preparation of a specific NPDES permit, which would require significant study and regulatory review, and which may not allow the discharge without significant modification of the scamping device." (Ex. F at p. 2.) Pursuant to California Water Code section 13267(b), the Water Board also ordered MARAD to provide a "Scamping Pilot Test Workplan" that specifies "sampling and analysis methods and protective measures for a proposed scamping technology pilot test in State of California waters," at least 45 days prior to any proposed pilot test. (*Id.* at p. 1.) To date, MARAD has not provided any such workplan, notwithstanding its repeatedly stated intent to proceed with an in-water method of hull cleaning. (See Letter from Sean Connaughton, MARAD Administrator, to Bruce Wolfe, Executive Officer of Water Board, dated July 5, 2007, attached hereto as "Exhibit

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K," and Letter from Elizabeth Megginson, MARAD Chief Counsel, to Bruce Wolfe, Executive Officer of Water Board, dated August 15, 2007, attached hereto as "Exhibit L;" see also Draft EA at pp. 2-4 – 2-6, 2-12, 4-9.)

The Federal Violators' knowing failure and refusal to comply with the Water Board's July 6, 2007, and September 14, 2007, Notices of Water Code 13267 Technical Report Requirements and to furnish the required technical reports, while continuing to discharge hazardous waste as defined in section 25117 of the California Health and Safety Code, violates section 13267(b) of the California Water Code. Consequently, pursuant to section 13268(c) and (d)(2) of the California Water Code, the Federal Violators are liable for civil penalties of up to \$25,000 per day for each day in which the violations of section 13267(b) have occurred and continue to occur. These violations may be abated by the Federal Violators' immediate submission to the Water Board of a Hazardous Waste Mitigation Workplan containing all components specified by the Water Board in its July 6, 2007, notice and a Scamping Pilot Test Workplan containing all components specified by the Water Board in its September 14, 2007, notice.

Upon expiration of sixty days from the date of this notice letter, unless abated prior to this date, the Water Board intends to sue the Federal Violators for the above-described violations of section 13267 of the Porter Cologne Act.

Identification of Parties and Counsel

The addresses and agency contacts for the Water Board are as follows:

California Regional Water Quality Control Board
San Francisco Bay Region
c/o Bruce Wolfe, Executive Officer, and Yuri Won, Senior Staff Counsel
1515 Clay Street, Suite 1400
Oakland, California 94612
T: 510-622-2300
F: 510-622-2460

California Regional Water Quality Control Board
San Francisco Bay Region
c/o Christian Carrigan, Senior Staff Counsel
1001 I Street, Room 1630
Sacramento, CA 95814
T: (916) 322-3626
F: (916) 341-5896

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The names and address of counsel representing the Water Board are as follows:

California Office of the Attorney General
c/o Christiana Tiedemann, Supervising Deputy Attorney General, and
Tara L. Mueller, Deputy Attorney General
1515 Clay Street, Suite 2000
Oakland, CA 94612
T: 510-622-2200
F: 510-622-2270

Conclusion and Relief Sought

Unless and until the foregoing violations of the Clean Water Act and Porter-Cologne Act are abated within 60 days of the date of this letter, the Water Board intends to sue the Federal Violators in United States District Court for the Eastern District of California 60 days after the date of this letter. The Water Board intends to sue the Federal Violators for injunctive relief, costs and civil penalties. Specifically, pursuant to 33 U.S.C. section 1365(a) and California Water Code section 13386, the Water Board will request a judicial order to, among other things, compel the Federal Violators to halt their unlawful and unpermitted ongoing and continuing discharges of pollutants from the SBRF vessels and to cease in-water cleaning, transportation, removal and disposal of vessels in the SBRF, and to cease accepting new vessels into the SBRF, unless and until such activities can be done in full compliance with the Clean Water Act and Porter-Cologne Act.

The Water Board also will request a judicial order, pursuant to section 13385(b) of the California Water Code, compelling the Federal Violators to pay civil penalties in an amount not to exceed \$25,000 per day for each day in which the Federal Violators have violated and continue to violate section 13376 of the California Water Code, plus an additional penalty of up to \$25 times the number of gallons discharged in excess of 1,000 gallons that the Federal Violators have failed to clean up. Finally, the Water Board will request a judicial order, pursuant to section 13268 of the California Water Code, compelling the Federal Violators to pay civil penalties in an amount not to exceed \$25,000 per day for each day in which the Federal Violators have violated and continue to violate section 13267(b) of the California Water Code.

This notice encompasses all violations of the Clean Water Act and Porter-Cologne Act by the Federal Violators arising from the factual allegations set forth herein, and evidenced by information that becomes available to the Water Board after the date of this letter. In particular, the Water Board provides notice that it intends to sue the Federal Violators for ongoing, continuing and threatened unlawful and unpermitted discharges of pollutants, including paint, hull fragments, rust, organic and inorganic materials containing heavy metals, PCBs, asbestos, fuels, used oil and other pollutants, after the date of this letter.

If you are prepared to correct the violations identified in this letter, or otherwise have any information you wish convey regarding this matter, please contact the undersigned and the

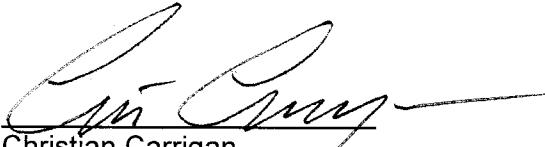
Honorable Mary E. Peters
Honorable Sean T. Connaughton

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Water Board's identified counsel immediately. Thank you for your attention to this matter.

Sincerely,



Christian Carrigan
Senior Staff Counsel
California Regional Water Quality Control Board, San Francisco Bay Region

Enclosure

cc (w/ encl. via certified mail, return receipt requested):

Stephen L. Johnson, Administrator of U.S. EPA
Michael B. Mukasey, Attorney General of the United States
Wayne Nastri, Regional Administrator of U.S. EPA, Region 9
Dorothy Rice, Executive Director, State Water Resources Control Board
Tam Doduc, Chair, State Water Resources Control Board

cc (w/ encl. via regular mail):

Edmund G. Brown Jr., California Attorney General
Michael A.M. Lauffer, Chief Counsel, State Water Resources Control Board
Bruce Wolfe, Executive Officer, California Regional Water Quality Control Board,
SF Bay Region
John Muller, Chair, California Regional Water Quality Control Board, SF Bay Region
Yuri Won, California Regional Water Quality Control Board, SF Bay Region
Linda Adams, Secretary, California Environmental Protection Agency
Cindy Tuck, Undersecretary, California Environmental Protection Agency
Matt Bogoshian, Deputy Secretary, California Environmental Protection Agency
Maureen Gorsen, Director, California Department of Toxic Substances Control
Paul Thayer, Executive Officer, California State Lands Commission
Christiana Tiedemann, Supervising Deputy Attorney General
Tara L. Mueller, Deputy Attorney General